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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO PRECLUDE LATE
DISCLOSED EVIDENCE,
RECONSTRUCTION AND OPINIONS
FOR THE STATE'S 50-54TH
SUPPLEMENTAL DISCLOSURES FILED
MARCH 30, 2010.

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Preclude Late Disclosed Evidence, Reconstruction and Opinions from the State's 50-54th Supplemental Disclosures filed March 30, 2010, and asks that the Motion be denied. The State's position is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Yet again, Defendant's Motion is little more than a restatement of all the other motions to preclude or exclude witnesses and evidence that have been filed in this case. And as the State has acknowledged on numerous occasion, as required by Rule 15.6, the State has continued to make seasonal disclosure of new or different information in this case. Additional

1 review, additional testing and requests for additional information is necessary in order to
2 ensure that every possible avenue has been explored in the State's attempt to resolve all issues.

3 ***I. Sgt. Dan Winslow – Measurements at the Crime Scene***

4 During an interview with the defense team, Sgt. Winslow was asked numerous
5 questions regarding distances in relation to the path, shoe prints and bicycle tire tracks that
6 were photographed on the land behind the Bridal Path property. Because the distances were
7 not measured during the initial investigation, Sgt. Winslow returned to the scene with Evidence
8 Tech Dawn Miller and the photographs that were taken shortly after Carol's murder to see if he
9 could resolve some of the issues. Using the photographs, Sgt. Winslow traveled the path as
10 indicated by the markers. With the aid of a single wheel rolling device, the type normally used
11 on crime scenes, Sgt. Winslow measured the location of each evidentiary tent and noted the
12 approximate distances. (See Exhibit A – YCSO Supplement 134.)
13

14 During the interview, Sgt. Winslow was also asked whether he observed any shoe
15 impressions near and along the bicycle tracks. At the time, Sgt. Winslow did not recall any
16 near the bicycle tracks other than those found where the bicycle had been hidden on the brush.
17 Due to his uncertainty on the issue, Sgt. Winslow refreshed his recollection with a thorough
18 review of the photographs. Sgt Winslow determined that the shoe impression found where the
19 bike was hidden were similar to those along side the bicycle tire track in the sandy portion of
20 the path. Sgt. Winslow noted the shoe impression both on the way in from the trailhead and on
21 the way out, as well as one near the gate all appeared to be similar.
22

23 To accurately document his follow-up investigation, Sgt. Winslow wrote a
24 supplemental report. This was disclosed on March 17, 2010. The State's ongoing duty to
25 investigate all aspects of this case is not grounds for preclusion of this evidence. Defendant
26

1 fails to offers any authority in support of his request and Sgt. Winslow should not be precluded
2 from offering testimony regarding his recent investigations, actions and observations.

3 **II. Commander Mascher – Shoe Comparison**

4 As the State has acknowledged on many occasions, Commander Mascher is not an
5 expert on shoe comparison; however, he is a highly trained law enforcement officer who is
6 eminently capable of making personal observations. Commander Mascher issued a two
7 paragraph supplemental report which documents his review of the FBI shoe report, the samples
8 of La Sportiva shoes, and the photographs of the shoe impressions taken at the scene. (See
9 Exhibit B – YCSO Supplement 135.) Commander Mascher noted in his supplement that he
10 “found no difference” between the shoe impressions at the scene and the shoe tread of the La
11 Sportiva shoes. Clearly, this is not an expert opinion, but it is a valid opinion by a law
12 enforcement officer which should be admissible at trial. *See State v. Amaya-Ruiz*, 166 Ariz.
13 152, 168, 800 P.2d 1260, 1276 (1990) (there is no error in admitting personal observations that
14 patterns are similar where the jury will be permitted to reach its own conclusion regarding
15 similarity or dissimilarity). Defendant’s request to preclude Commander Mascher from
16 offering testimony regarding his personal observations should be denied.
17
18

19 **III. DPS Forensic Examination**

20 This Court recognized that computer forensics is an extremely time consuming process
21 and denied Defendant’s previous requests to preclude the analysis of the examinations. As the
22 recently disclosed analyses are merely continuations of the earlier examinations, Defendant’s
23 request to preclude should also be denied.
24

25 ///

26 ///

1 **IV. Information Regarding La Sportiva Shoes**

2 This Court has ruled that the shoe evidence should not be precluded; therefore,
3 Defendant's request must be denied.

4 **V. Jail Visit Recordings**

5 In the State's 46th Supplemental Disclosure dated January 29, 2010, the State listed the
6 individuals to whom Defendant made relevant statements regarding this case and provided
7 notice it intends to admit these statements at trial. Included on the list are Katherine
8 DeMocker, Charlotte DeMocker, and Renee Girard as well as several other individuals. In his
9 latest request for blanket preclusion, Defendant asks the Court to preclude any statements
10 Defendant made to the above listed individuals during jail visits¹. The State has disclosed two
11 YCSO supplemental report detailing statements of interest made during jail call and visits.
12 (See YCSO DR Supp 130 at Bates 18594-18600 disclosed in the 48th Supplemental
13 Disclosure dated March 3, 2010, and YCSO DR Supp 141 at Bates 20756-20759 in the 57th
14 Supplemental Disclosure dated April 5, 2010.) It seems the defense would have the Court
15 place these "jail visit" statements in a category separate from all other statements and implies
16 the State should be required to make of special notice regarding intent, however, Defendant
17 offers no authority to support his request. Defendants request to preclude the statements
18 Defendant made during jail visits should be rejected.
19
20
21

22 **VI. Sorenson Forensic Testing**

23 Defendant's representative was present at Sorenson Laboratory for the latest round of
24 testing. The result of these tests is expected soon and the State will provide the defense with
25 them the defense as soon as possible after receipt. More importantly, this Court has determined
26

¹ No summaries of jail visits have been produced.

1 that the results of this testing should not be precluded. This portion of Defendant's motion
2 should be denied.

3 ***VII. Information from FIA Card Services***

4 During hearing on April 8, 2010, this Court acknowledged that the delay in obtaining
5 all of Defendant's bank records was understandable and that the State exercised diligence in its
6 attempt to obtain complete records. As a result, Defendant's attempt to preclude these recently
7 received documents should be denied.
8

9 ***VIII. Phone Records for the Period Between June 17 and June 21, 2009.***

10 The State has informed the Court it has reason to believe these records are pertinent to
11 two theories material to the State's case. First, an anonymous email was sent from a Paradise
12 Valley internet café which attempted to implicate James Knapp in Carol's brutal murder. The
13 defense has clearly indicated it will try to introduce third party culpability regarding Mr.
14 Knapp. This email contained information not known to the public at the time. The State
15 subpoenaed the records to determine whether Ms. Girard sent or received cell phone or other
16 electronic communication via cell phone to or from that area around that period of time.
17

18 Second, Defendant attempted to explain away his pre-arrest research into "how to
19 disappear" as being the result of fear of being unjustly charged with Carol's murder. The State
20 has reason to believe Defendant and Ms. Girard were communicating in code during their
21 telephone communications and jail visits. The State believes the code was created so
22 Defendant and Ms. Girard could communicate privately regarding Defendant's substantial
23 plans to flee prior to his arrest. As the attempt to flee is indicative of guilt, this evidence is
24 highly relevant and fundamentally material to the State's case and should not be precluded.
25

26 Rule 15.7 of the Arizona Rules of Criminal Procedure
authorize the trial court to sanction a party who does not timely

disclose material relevant to the case. *If a sanction is warranted, it should have minimal effect on the evidence and the merits of the case. Precluding evidence is rarely the appropriate sanction.*

State v. Towery, 186 Ariz. 168, 186, 920 P.2d 290, 308 (1996) (emphasis added).

IX. Documents from Provident Funding

As with the subpoena return from FIA Card Services, this Court acknowledged that the delay in obtaining all of Defendant's bank records was understandable and that the State exercised diligence in its attempt to obtain complete records. As a result, Defendant's attempt to preclude these recently received documents should be denied.

X. Purchases from The Flower Box

During a recent² telephone conversation with the State's witness Sally Butler, the State learned that Ms. Butler was present in Carol's home on February 14, 2008. There, Ms. Butler observed a bouquet of roses. Ms. Butler learned from Carol that Defendant had entered her home while Carol was away and without Carol's permission to deliver the flowers. At this point, the State endeavored to obtain evidence to show the flowers were provided by Defendant. A review of Defendant's American Express credit card receipts showed a substantial purchase from The Flower Box, a local flower shop, on or about February 20, 2008. The State issued a subpoena for Defendant's purchases and found that on February 14, 2008, Defendant ordered a one dozen arrangement of red roses and two wrapped red roses. Defendant asked that these be held for personal pick-up. (See Exhibit C – Flower Box Receipt.)

² The exact date of the conversation is unknown however the State beleives it took place within the last thirty days.

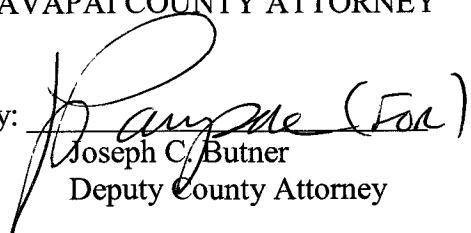
Defendant is charged with First Degree Burglary. The State believes that on July 2, 2008, Defendant entered the home without Carol's knowledge or permission and waited for her to return from her run. The fact that just months prior to July 2, 2008, on February 14, 2008, Defendant entered into the Bridal Path residence without the knowledge or permission of Carol Kennedy tends to demonstrate Defendant's guilt. This evidence is newly discovered, relevant and material and should not be precluded.

CONCLUSION:

The State respectfully requests the Court deny Defendant's Motion to Preclude Late Disclosed Evidence, Reconstruction and Opinions from the State's 50-54th Supplemental Disclosures filed March 30, 2010.

RESPECTFULLY SUBMITTED this 9th day of April, 2010.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

By:  (For)
Joseph C. Butner
Deputy County Attorney

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COPIES of the foregoing delivered this
9th day of April, 2010 to:

Honorable Thomas J. Lindberg
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Anne Chapman
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2929 North Central Ave, 21st Floor
Phoenix, AZ
Attorney for Defendant
(via email)

By: Wade Cornell

STATE'S EXHIBIT A

YCSO SUPPLEMENT 134

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
134 Winslow, D	11:24:29 03/10/10	
+Supplement Sgt. D. Winslow:		

On 12-16-2009 at appx 1500hrs, I had a defense interview at the Prescott CI Conference room with Attorney John Sears, who represents Steven Democker. Present at the interview were Sears and his investigating assistant, Deputy County Attorney Joe Butner, County Attorney Investigator Mike Sechez, and me. During the interview Mr. Sears asked an assortment of questions about distances pertaining to the bicycle tire tracks and path that was traveled. At one time he asked and suggested that he thought that the bike was left appx 100 yards from the gate area. I was unsure of the distance and agreed, at that time, that it was of the approximate distance he suggested.

The distance was not measured during the initial investigation that I knew of. I went back out to the location on 02-17-2010 with Property and Evidence Tech Dawn Miller. We used photographs to locate and follow the path that had been taken on the way in. The spot where the bicycle had been left was located, along with the path that was traveled back to the gate. Using the photos, I traveled along the path and measured its length with a single wheel rolling device, regularly used on scenes of traffic crashes. The locations of each evidentiary tent and crime scene tape, as it crossed the path, were measured in approximate distances.

These distances, estimated by the use of photographs from the gate and back, were as follows:

Bike tracks start appx 1 foot inside the gate.

Jpg 5242	Marker #1	3 feet
Jpg 5250	Marker #2	16 feet
Jpg 5252	Marker #3	28 feet

Appx location of Yellow Crime Scene tape after Marker #3

Jpg 5255	Marker #4	47 feet
Jpg 5259	Marker #5	202 feet
Jpg 5262	Marker #6 (Marker #19)	212 feet
Jpg 5265	Marker #7	274 feet
Jpg 5270	Marker #8	345 feet
Jpg 5273	Marker #9	405 feet
Jpg 5280	Marker #10 (Marker #12)	552 feet
Jpg 5284	Marker #11 (Bike)	564 feet

Bike tracks out from #11 back to gate:

Jpg 5288	Marker #12 (Marker #10)	12 feet
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Jpg 5293	Marker #13	26 feet
Jpg 5295	Marker #14	36 feet
Jpg 5297	Marker #15	69 feet
Jpg 5299	Marker #16	98 feet
Jpg 5302	Marker #17	130 feet
Jpg 5305	Marker #18	167 feet
Jpg 5307	Marker#19 (Marker #6)	191 feet

From #19 / #6 back to gate 212 feet

Total approximate distance from bike and return to gate 403 feet.

Mr. Sears also asked about the possibility of any foot tracks that might have been left near and along side the tire tracks. He specifically asked about any that were likely to show similarities to the foot tracks which were found that traveled from the bike to the back of the house and then back to the bike. I felt, during the interview, that there were none near the bicycle tracks, other than the partial ones that were found as the subject retrieved the bike and started his travel out through the brush, sandy and weeded area.

Because of this, I reviewed the photos at a greater length. I did find tracks that appeared to have very little difference from the ones in the back. These tracks were along side the tire tracks in the sandy portion of the trail at different locations. In photo numbered 5252, at least two tracks are visible with one being very near "tent" number 3. These are on the left side of the tire tracks and appear to be in the direction of heading towards the gate. In photos 5337 and 5338 there are at least 3 shoe tracks visible on the left side of the tracks and leading out. Photo 5307 showed a similar track appearing to lead towards the direction of the gate.

I also found similar shoe tracks on the left side of the tire tracks that appeared to have been made on the way in. These numbered photos were 5265, 5267, 5268.

There did appear to be partial shoe tracks near the gate of similar sole patterns that could be viewed in 5240 through 5248.

At this time no further.

Wed Mar 10 11:33:00 MST 2010 C16/0394 DBW

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STATE'S EXHIBIT B

YCSO SUPPLEMENT 135

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
135 Mascher, S	14:34:19 03/10/10	
+ Investigation Narrative		

On 2-10-10 Det. McDormett advised me that the FBI Crime Lab had identified the shoe tread pattern of the shoe prints from the Kennedy homicide scene. He said that three shoes had been manufacturd with this tread type design and Det. McDormett had requested these shoes be shipped by La Sportiva for comparison. I had measured a shoe print from the crime scene at approximately 12 inches long and approximately 4.5 inches wide at the ball of the foot and asked Det. Mcdormett to show me one of the shoes he received approximately that size. At first seeing the shoe I recognized the heel pattern as no difference from that at the scene. I had the tread pattern from the shoe transferred to a clear plastic sheet and compaired it to a photograph that Det.T. Kennedy had taken from the scene. I compared this over my office computer screen with Det. T. Kennedy's photographs from the crime scene. I also compared this shoe tread pattern with photographs which were taken by Evidence Tech. Dawn Miller from the scene.

With having tracked, examined and measured the shoe prints from the crime scene in my opinion I have found no difference in the shoe tread that Det. McDormett gave me for comparison.

End of Report: Mascher #110

Date, Time, Reporting Officer:

019764

STATE'S EXHIBIT C

FLOWER BOX RECIEPT DATED FEBRUARY 14, 2008

Flower Box

219 W. Conley 440 0470
PHOENIX AZ 85001

SENDING
FTD CODE NO.

INVOICE NO.

SOLD TO

Steve Democher

ADDRESS

STATE

CUSTOMER
PHONE NO.

ZIP
CODE

ORDERED
BY

DATE

CARD NO.
CODE

DESCRIPTION

149870

DELIVERY DATA

2-14-08

AM

PM

CUSTOMER

ORDER DATE

1 Doz. Red Roses Arrang 90 -
2 Red Roses Wrapped 12 -

RTO A/C

PHONE

SUB TOTAL

TAX

Thank You!

DELIVERY

CODE

SALES

ANALYSIS

TOTAL

BIRTHDAY

ANNIVERS

CONGRAT

BABY CONGRAT

BOY GIRL

HOLIDAY

SYMPATHY

SPEEDY DELV

OTHERS

CARD

Pick Up after 4:30

FIRST NAME

LAST NAME

OF VER

ADDRESS

STATE

STATE

ZIP
CODE

INVOICE NO.

019824